

Remarks

Claim 15 has been amended to further clarify that recording the disc based on the job involves the medical date viewing software being recorded on the disc along with the medical data. Claims 1-14, 17, 19-24, 33, and 34 were previously canceled. Claims 15, 16, 18, 25-32 remain pending in the application.

Examiner Interview

The Applicant thanks the Examiner for taking the time on October 10th to speak to the undersigned about the comments made in the Advisory Office action and in particular the acknowledgement by that the Cited References do not appear to teach recording medical data viewing software on the same disc as the medical data. During the teleconference, the language of pending independent claim 15 was discussed. No agreement was reached.

35 U.S.C. §112

The Examiner has withdrawn the previous objections to claims under the first and second paragraph of 35 U.S.C. 112.

35 U.S.C. §103

Claims 15, 16, 18 and 25-32 stand rejected under 35 USC 103(a) as being unpatentable over Pelanek, U.S. Patent No. 5,724,582 (Pelanek) and in view of Murray et al., U.S. Patent No. 5,721,891 (Murray) and further in view of Koritzinsky, U.S. Patent No. 6,988,074 (Koritzinsky) and further in view of Kahle, U.S. Patent No. 5,518,325 (Kahle) and further in view of Laney et al., U.S. Patent No. 6,366,966 (Laney) (collectively referred to as the "Cited References").

Applicant respectfully disagrees with the Examiner's statement in the Advisory Action that "claim 15 does not call for or does not recite 'recording medical data view software on the same disc as the medical data' as argued." In particular claim 15 prior to the current amendment, described creating a job containing medical data and medical data viewing software and later recording a disc with the data produced by the job. In short, claim 15 has, for some time now, described a job contained both medical data and

viewing software and that job was recorded on the disc. In the interest of facilitating examination and allowance of the pending claims, the language of claim 15 has been amended to further clarify that the recording step records a disc based on the job such that the medical date viewing software is recorded on the disc along with the medical data. As acknowledged by the Examiner this feature is not taught or suggested by the Cited References.

In addition, the Examiner identified column 5, lines 40-50 in Pelanek as describing parsing medical data with a software module for patient identification information and study information. The Applicant respectfully disagrees with this assertion. While Pelanek does mention the option of gathering patient's name or ID number from an XEM motion image source interface 58, such information is at best only some form of patient identification information. Pelanek still does not teach or describe parsing such information by parsing the medical data itself but rather independently obtained the information from an interface 58. In addition, Pelanek still does not teach or describe parsing the medical data for study information. Thus, neither Pelanek nor any of the other Cited References teach or suggest parsing received medical data with a software module for patient identification information and study information and subsequently printing a template with that parsed information to label the disc as now claimed in independent claim 15.

As previously stated in Applicant's response filed September 18, 2008, the Applicant respectfully requests the production of an evidentiary record for the Office Notice taken by the Examiner. As the Examiner well knows, the factual question of motivation to combine is material to patentability, and can not be resolved on subjective belief and unknown authority. The finding of obviousness must be based upon substantial evidence, and not subjective musings or conjecture by the Examiner. Deficiencies in the evidentiary record cannot be cured by general conclusions such as "general knowledge" or "common sense." Accordingly, the Examiner cannot rely on unsupported, conclusory statements to close holes in the evidentiary record. Unless the Examiner can establish an evidentiary record based on concrete prior art references

that establish that it would have been obvious to a person with ordinary skill in the art to incorporate the features of Applicant's dependent claims, the claims should be allowed.

In the present patent application, the Examiner has not provided substantial evidence regarding at least the features of the present invention as claimed in dependent claims 27 and 28. Therefore, the Applicant respectfully requests that such evidence be provided or this unsubstantiated objection to the claims be withdrawn.

Further, as previously stated in Applicant's response filed September 18, 2008, the assertion of obviousness made in the Final Office Action with respect to the dependent claims as based on five references from disparate and non-analogous technical arts appears to take into account more knowledge than what was within the level of ordinary skill in the art at the time the claimed invention was made, and appears to include additional knowledge gleaned only from the Applicant's disclosure (i.e., improper use of hindsight). The Applicant respectfully points out that the reference must, at a minimum, either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. It does not appear as if that is the case with many of the Cited References. Further, the gaps in the teachings between these Cited References simply can not be bridged by common sense alone. The gist of the present invention as claimed lies within these gaps, including but not limited to, the unique combination of features of a method for recording medical data on a disc. As such, this obviousness rejection is flawed and must be withdrawn.

Furthermore, claims 16, 18 and 25-32 depend from claim 15 and therefore are allowable over the Cited References for the same reasons that claim 15 is allowable.

In summary, the Cited References fail to teach at least the two features described in pending independent claim 15. These two features are: (1) parsing received medical data with a software module for patient identification information and study information and subsequently printing a template with that parsed information to label the disc; and (2) recording a disc based on the job such that the medical data viewing software is recorded on the disc along with the medical data. Therefore, under 35 USC 103(a), the Cited References, namely over Pelanek, Murray, Koritzinsky, Kahle, and Laney fail to

teach the present invention as claimed in claims 15, 16, 18, 25-32 and withdrawal of this rejection is respectfully requested.

Conclusion

On the basis of the foregoing, Applicant respectfully submits that claims 15, 16, 18, 25-32 are now believed to be in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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